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BOOK REVIEW

THE SCOPE AND STRUCTURE OF CIVIL CODES

(Julio César Rivera ed., Springer 2013)

Reviewed by Jimena Andino Dorato *

This book features a collection of essays originated in the Second Thematic Congress of the International Academy of Comparative Law, held in Taiwan in May 2012. As indicated in the Preface, the subject matter of the “Congress was ‘Codification’, and the subject of the panel regarding the civil codes was: ‘*The scope and structure of civil codes. The inclusion of commercial law, family law, labor law, consumer law*’.”¹ The book reviewed here is not only a compilation of some revised and reformulated National Reports presented in the panel but also a coherent and well-structured work on comparative codification.

The volume is divided in two Parts. Part I solely consists of a contribution by Professor Julio César Rivera, editor of the book, while Part II regroups, in alphabetical order, contributions from countries belonging to different legal families and representing both codified and uncoded models.

Professor Rivera’s opening paper is both a comprehensive introduction and an autonomous paper on comparative codification. Following his extensive work on codification, decodification and recodification,² the editor dedicates the first part of his essay to the codification method by describing the

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1. Julio César Rivera, *Preface* to THE SCOPE AND STRUCTURE OF CIVIL CODES (Julio César Rivera ed., Springer 2013) [hereinafter CIVIL CODES].

2. See, in Spanish, Julio César Rivera, *La recodificación. Un estudio de derecho comparado*, REV. JURÍDICA DEL PERÚ, Año LII, n° 41, diciembre 2002, p. 83-130; in French, Julio César Rivera, *Le code civil : son rôle comme source du droit privé* in LE DROIT CIVIL ET SES CODES : PARCOURS À TRAVERS LES AMÉRIQUES 117-64 (Jimena Andino Dorato, Jean-Frédéric Ménard, & Lionel Smith eds., Les édition Thémis, Montreal 2011).

codification era from Napoleonic times until the codes of the Twentieth Century. After outlining specific examples like the status of codes in federal states and uncoded models, he then discusses how the “overestimated” decodification era was followed by a renewed interest in recodification.

In the second part, with a general and comparative approach and specific references to national reports (whether or not included in the book), Professor Rivera focuses on codes’ contents. He also explains their links with other branches of law, as well as the role of the civil code in relation to other national or supranational sources of positive law.

The twenty contributions that make Part II of the book follow, with few exceptions and modifications, the structure of Chapter 1. Each chapter is a domestic analysis of a particular country or region, a comprehensive reference work that offers the comparatist invaluable tools to compare law, overcoming the inherent difficulties. The similar structure allows comparing apples with apples and oranges with oranges³ through three main axis or comparative foundations on codification.

The first axis of comparison is codification, decodification and recodification. Contributions start with preliminary historical and political references on codification—or not—referring to the country’s preference on decodification or recodification.

The second axis explores the contents of the civil code and the links between other branches of law. After introducing the structure and contents of the of the country’s civil code, authors explain the link between the civil code and domestic commercial law, consumer law, family law, labor law and private international law.

The last comparative axis focuses on matters of hierarchy or the place of the civil code. Contributors then pay attention to the

3. See JACQUES VANDERLINDEN, *COMPARER LES DROITS* 312 (Kluwer Belgique 1995).

code's relationship with the national Constitution and public international law.

From these three axes, infinite comparisons become possible. However, suggesting personal paths of analysis seems unfaithful to the spirit of the book. Therefore, contributions that made up the book are presented following the alphabetical order chosen by the editor, leaving comparison among them to the field of interest, needs and even imagination of the comparatist.

In Chapter 2, Professor Graciela Medina illustrates how *Argentina*, after three stages of fundamental reforms and a tendency toward decodification, moved back to recodification.⁴ In light of the interest in this recodification process, she chose to describe the structure of the 2012 *Draft over the Code in force*. Considering the actual passage of the new code after publication of the book under review, this contribution is probably one of the first comments in the international sphere on the Argentinean Civil Code now enacted.⁵

Professors Heirbaut and Matthias E. Storme explain in Chapter 3⁶ how *Belgium*, “more faithful the French Civil Code than France itself,”⁷ failed in several efforts to replace the Code. This doesn't mean its updating was neglected in several aspects over the years. They then revisit the sources of civil law today, analyzing constitutional rules and regional law. After that, they focus on how commercial law has always been separate but never really autonomous, and on the domestic and regional debate on an autonomous consumer law.

Four jurists—Augusto Teixeira Garcia, Dan Wei, Paula Nunes Correia and Tong Io Cheng—emphasize and describe, in Chapter

4. Graciela Mendina, *Argentina on the Eve of a New Civil and Commercial Code* in CIVIL CODES, *supra* note 1, at 43-66.

5. After the publishing of the book under review, Argentina passed a new unified Civil and Commercial Code, Ley No. 26994, BO 8/10/2014.

6. Dirk Heirbaut & Matthias E. Storme, *Private Law Codification in Belgium* in CIVIL CODES, *supra* note 1, at 67-82.

7. *Id.* at 67.

4, the unique situation of *Macau*⁸ which “just like Hong Kong, is a Special Administrative Region (SAR) of *People’s Republic of China* (PRC).”⁹ While the Civil Code encapsulates general law, the particular situation of Macau has consequences on various branches of law: for instance, family law is structured both as part of the Code, Macau Basic Law and other codified and non-codified legislation. This particular situation also has some important influence on the relationship between the Code and Macau Basic Law, described as consisting of a “mini-constitution” and treaties.

Chapter 5 is another example of complete recodification. In this case, an historical and political background underlies a complete turning point from an extensive socialist codification to the adoption of a Civil Code.¹⁰ Professors David Alischer, Ondřej Frinta and Monika Pauknerová explain how new laws in the *Czech Republic* are “built upon clear ideological foundations and leading ideas corresponding to Central European traditions.”¹¹ They outline that there is still much incertitude on the future interpretation of this novelty, only in effect since 2014. In a very detailed manner, and always referring to the historical context, the authors visit all three axes presented above. Thus, they describe the Code’s structure and contents, its relationship with the Constitution, treaties and private international law, as well as with business law, consumer law and family law.

The following contribution, in Chapter 6, is another case of recodification in a former socialist country.¹² As Professor Irene Kull outlines, the process of codification in *Estonia* “was basically

8. Augusto Teixeira Garcia, Dan Wei, Paula Nunes Correia & Tong Io Cheng, *Codification in China: The Special Case of Macau* in CIVIL CODES, *supra* note 1, at 83-104.

9. *Id.* at 84 (emphasis by author).

10. David Elischer, Ondřej Frinta & Monika Pauknerová, *Recodification of Private Law in the Czech Republic* in CIVIL CODES, *supra* note 1, at 105-32.

11. *Id.* at 106.

12. Irene Kull, *Codification of Private Law in Estonia* in CIVIL CODES, *supra* note 1, at 133-54.

initiated with a blank slate”¹³ and court interpretation plays a significant role. Estonian codification has the particularity of a code composed of five separate laws (General Part, Property, Obligations, Succession and Family, and International Private Law). Then it is this “Civil Code” that is presented vis-à-vis labour law, consumer law and the Constitution and treaties.

In Chapter 7, Professor Teemu Juutilainen introduces a non-codified civil law jurisdiction: *Finland*.¹⁴ This Nordic country, despite a few attempts at codification, remained locally skeptical about this methodology throughout its participation in discussions about a European Civil Code. Following a short historical explanation of the absence of a code, the author presents the three main acts that constitute the core of Finnish Patrimonial Law Legislation and the links and structure of commercial, consumer, labor and family law. He then outlines the case of the autonomous status of the Region of Åland that, though limited, has some examples of regional private law. Finally, in the sense of the third axis approached in all papers, he points out the relationship between private law, the Constitution, and public international law.

We then arrive in *France*, with its undeniable leading role in the history of codification. In Chapter 8,¹⁵ Professor Jean-Sébastien Borghetti focuses on the uniqueness of the French Civil Code that, though reformed in matters as personal status and family law, was never the subject of serious consideration for global reform or recodification. Despite its actual political and symbolical importance, Professor Borghetti outlines how the Code does not reign supreme anymore in the field of civil law due to Constitutional reforms. In this sense, the French Constitution of 1958 asserts both the importance of the Constitution in the French

13. *Id.* at 150.

14. Teemu Juutilainen, *Finnish Private Law: Statutory System Without a Civil Code* in CIVIL CODES, *supra* note 1, at 155-80.

15. Jean-Sébastien Borghetti, *French Law* in CIVIL CODES, *supra* note 1, at 181-200.

legal order and the precedence of international rules over national ones.

In Chapter 9, Professor Christina Deliyanni-Dimitrakou presents how in *Greece* the Civil Code faced both decodification and recodification.¹⁶ Before entering a very detailed analysis of the matter, the author explains the historical context of an eclectic Code, only adopted in 1940. Through her presentation on codification and recodification shifts, she establishes the relationship of the Code with other branches of law.

Israel, presented by Professor Eyal Zamir in Chapter 10,¹⁷ is the first example of a mixed jurisdiction in the book. Besides its pioneering role in legislative harmonization between civil and common law, the case of Israel is an interesting example of codification by installments. Even with a project to codify in a Civil Code some of the existing legislation, traditional contents of civil codes like contracts or obligations and some aspects of family law (whether religiously or secularly considered) are kept separate from codification.

In Chapter 11 we find *Italy* as a Code originated in model combinations.¹⁸ With decodification prevailing over recodification, Professor Rodolfo Sacco shows how the code lost its monopoly over the years through the adoption of various intense domestic legislation and European rules.

Staying in the scope of codes stemming from comparative law influenced both by German and French models, Professor Hiroyasu Ishikawa presents how *Japan* resisted direct decodification of its Civil Code.¹⁹ Contrary to the Commercial

16. Christina Deliyanni-Dimitrakou, *The Greek Civil Code Facing the Process of Decodification and Recodification of Law* in CIVIL CODES, *supra* note 1, at 201-33.

17. Eyal Zamir, *Private Law Codification in a Mixed Legal System – The Israeli Successful Experience* in CIVIL CODES, *supra* note 1, at 233-48.

18. Rodolfo Sacco, *A Civil Code Originated During the War (The Italian Codice Civile)* in CIVIL CODES, *supra* note 1, at 249-66.

19. Hiroyasu Ishikawa, *Codification, Decodification, and Recodification of the Japanese Civil Code* in CIVIL CODES, *supra* note 1, at 267-86.

Code that was largely decodified, the Civil Code maintains its role as general law in the field of private law, with a few separate legislations for consumer law, which is also submitted to the superior status of the Constitution and treaties. The author also outlines the existence of a recodification spirit subject to the bureaucratic characteristics of law-making in Japan.

In Chapter 13 we can find another case of global reforms.²⁰ From 1970 onwards, *the Netherland's* Code, originally inspired by the Napoleonic Code, was (and is) gradually recodified. Professor Anna Berlee graphically presents the actual contents of the Civil Code and its relationship with the Commercial Code (which will be completely incorporated to the Civil one) and consumer, family and labor law that are for the most part already included in the new Code. Professor Berlee also outlines the influence of European legislation in the Dutch recodification process as well as its particularities as a monist country.

Portugal, in Chapter 14,²¹ is another example of global reform in the second half of the 20th Century although it suffered from decodification afterwards. Notwithstanding the decodification process, Professor Dário Moura Vicente outlines how the Civil Code still stands as the cornerstone of private law, divided into separate branches of commercial and consumer law. This role is limited by the Constitution and international treaties duly ratified or approved and published in Portugal.

In Chapter 15, Professor Muñiz Argüelles from *Puerto Rico* provides a complete paper exclusively focused on the first axis of comparison: codification, decodification and recodification.²² Not limited to his country, the author provides his ideas on the matter,

20. Anna Berlee, *A Matter of Honour, in Which a Small People Can Be Great – The Dutch Codification Efforts in Brief* in CIVIL CODES, *supra* note 1, at 287-318.

21. Dário Moura Vicente, *The Scope and Structure of the Portuguese Civil Code* in CIVIL CODES, *supra* note 1, at 319-30.

22. Luis Muñiz Argüelles, *Some Personal Observations on Codification in Puerto Rico* in CIVIL CODES, *supra* note 1, at 331-42.

comparing examples of success and failure from other countries and regions.

Next, Professor Elspeth Reid takes us back to another example of mixed jurisdiction, in this case, one that is not codified: *Scotland*.²³ The author introduces the sources of law in specific areas (property law, succession law, contract law, consumer law, delict, commercial law and family law) and she then outlines how domestic jurists discourage codification though actively participating in European codification ideas.

In Chapter 17, Professor Gabriel García Cantero from *Spain* allows us to revisit another traditional code inspired by the French system, subject to both decodification and recodification.²⁴ The Spanish Civil Code is also an example of a code that lost its original “constitutional value” in favor of the Constitution as the supreme law and, with some particularities, communitarian law. Another particularity that Professor García Cantero points out is the existence of many autonomous territories in Spain and their link with the Code.

Turkey, seeking secularization, is another case of modern codification through voluntary legal transplants.²⁵ The Civil Code of 1926, that with some alterations was a translation of the Swiss Civil Code, and the Code of Obligations were replaced by a new code in 2001. The contents of the Code in force are the same as the old one. Commercial and consumer law are kept as separated branches and, as Professor Ergun Özsunay indicates, Turkey, when once focused on westernization, these days uses European rules as inspiration in recent reforms.

23. Elspeth Reid, *Mixed but Not Codified: The Case of Scotland* in CIVIL CODES, *supra* note 1, at 343-68.

24. Gabriel García Cantero, *Is It Possible for a Minor Code of the Nineteenth Century to Serve as a Model in the Twenty-First Century?* in CIVIL CODES, *supra* note 1, at 369-86.

25. Ergun Özsunay, *The Scope and Structure of Civil Codes: The Turkish Experience* in CIVIL CODES, *supra* note 1, at 387-408.

The *United States of America* made up the book in two different chapters. In Chapter 19, Professor James R. Maxeiner presents a general analysis on codification on a country level.²⁶ With historical contextualization, the U.S. as a common law jurisdiction allows the author to expound on the cost of not codifying and the U.S. alternatives to codes. He then introduces the contents of civil code counterparts such as national “General Laws” and the Uniform Commercial Codes.

Due to its particularities, in Chapter 20, Professor Agustín Parise presents the case of *Louisiana’s* mixed jurisdiction.²⁷ The author emphasizes the importance of the context of this unique code in the U.S., its history, and evolution. He presents its structure and contents and the relationship with other branches including the supremacy of the U.S. Constitution.

The last contribution is for codification in *Venezuela*.²⁸ Professors Eugenio Hernández-Bretón and Claudia Madrid Martínez explain how after a first long codification process during the 19th Century, after three main amendments, we see a tendency to decodification due to the proliferation of special civil legislation outside the codes (for instance in family law and private international law, as well as consumer law, which was never regulated in the Code). Despite this tendency, as well as the supremacy of the Constitution, the author outlines the importance of the Civil Code as “the glue that keeps the unity of the system of Venezuela Private Law legislation.”²⁹

Altogether, the book is remarkable and most informative on comparative codification, describing a large spectrum of different systems. The good structure and similar organization of the twenty

26. James R. Maxeiner, *Costs of No Codes* in CIVIL CODES, *supra* note 1, at 409-28.

27. Agustín Parise, *Private Law in Louisiana: An Account of Civil Codes, Heritage, and Law Reform* in CIVIL CODES, *supra* note 1, at 429-54.

28. Eugenio Hernández-Bretón & Claudia Madrid Martínez, *Codification in Venezuela* in CIVIL CODES, *supra* note 1, at 455-66.

29. *Id.* at 464.

national contributions allow comparatists to access reliable research on codification matters. The authors, all renowned professors and researchers, are undeniably experts in private law, which ensures the quality of the papers. The possibility of comparing *comparables* will most certainly enrich research and inspire future comparative works.